



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 6206115

Date: DEC. 3, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a geosteering researcher and developer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief and contends that he is eligible for a national interest waiver under the *Dhanasar* framework.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will sustain the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was a geosteering solutions products manager for [REDACTED], a subsidiary of [REDACTED].⁵ For the reasons discussed below, we find the Petitioner has established eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research and development work aimed at improving well-placement and formation-evaluation technologies in the oil and gas industry. He asserted that his proposed endeavor involves inventing new workflows and products for the geosteering process.⁶ The Petitioner further stated that this work is focused on making geosteering activity fully automatic with real-time responsiveness and minimal or no human intervention. He also noted that he plans to undertake a project to improve integration processes between operations geologists and drilling engineers.

The record contains letters of support from the Petitioner's colleagues describing the benefits associated with improvements in well-placement and formation-evaluation technologies. For example, his references indicate that these advancements help companies in the oil and gas industry gain access to bypassed reserves that initially were not seen as practical natural resource targets. In addition, the references assert that maximizing borehole contact in the productive zone of a reservoir results in increased oil or gas production. Accordingly, the record shows that Petitioner's proposed research and development work has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. The aforementioned letters of support also discuss how the Petitioner's proposed work stands to advance the U.S. petroleum industry through development of improved methods for accessing oil and gas resources. For instance, [REDACTED] senior geological advisor

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Master of Science degree in geology from University of [REDACTED] in 2013.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we consider information about his position with [REDACTED] to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* framework.

⁶ He explained that "geosteering" refers to the use of real-time geological and directional data to help guide or place a wellbore for optimal natural resources drilling operations.

for [] stated that the Petitioner's undertaking "will significantly improve exploration and production efficiency, ease the drilling challenge, and enhance hydrocarbon production." Similarly, [] professor of subsea engineering at the University of [] asserted that the Petitioner's research and development work "will improve drilling activities in unconventional fields, solve the real-time drilling response efficiency challenge, and improve unconventional oil and gas production volume in our country." Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed work has broader implications for the field, as the results are disseminated to others in the field through petroleum geology conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed endeavor, we conclude that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes his curriculum vitae, academic records, professional memberships, published patent applications⁷, presented work, and documentation showing implementation of his technological innovations in the oil and gas industry. In addition, the Petitioner offered letters from a various industry experts describing his expertise in performing geosteering research and development work and his past record of success in that field.

We find that the Petitioner's past experience renders him well positioned to advance his proposed endeavor. His references identify specific examples of how the Petitioner's work has impacted his field and the petroleum industry. For example, [] head of digital transformation for [] indicated that the Petitioner's research and development work "is dedicated to inventing various new work flows and products for the geosteering process. Two examples are the [] and [] []" [] stated that the Petitioner "was the originator" of [] which is available through the company's website and Apple Store. [] asserted that this product "is the best geosteering tool on the market today" and that operation geologists throughout the field "are using it while they are geosteering their wells." For instance, [] noted that the Petitioner's integrated geoscience and drilling software has been adopted by "operator companies such as [] [], [] and [] and used for their oil and gas exploration and production activities.

[] senior technical manager with [] asserted that the Petitioner's [] is very useful and significant for real-time drilling business" and that his work "has made a substantial impact on oil and gas industry." [] explained that the benefits of this innovation include monetary savings, increased hydrocarbon productivity, reduced data loading time, and an optimized human interpretation process. He also indicated that the Petitioner's app drastically decreases the "communication process between different teams" and enhances "team collaboration during geosteering."

Likewise, [] principal product specialist with [] indicated that the Petitioner "has helped geosteers improve their working condition[s] . . . by designing a [] []" [] also noted that the Petitioner "filed two patents regarding []

⁷ This intellectual property documentation identifies the Petitioner as an inventor.

[redacted] and that these innovations have been critical for advancing real time geosteering activities. Furthermore [redacted] stated that the Petitioner's work is widely recognized "as indicated by a large number of software users (more than 1,500) of his product" in the geosteering field. As corroborating evidence, the Petitioner offered a printout listing numerous companies (such as [redacted] and [redacted] [redacted] that are utilizing his work.

In addition, [redacted] stated that the Petitioner developed "the idea of [redacted] based on machine learning technique and big data pattern recognition" and patented that work. [redacted] further asserted that the Petitioner's [redacted] "technique is useful and can save a tremendous amount of time for geologists when they are working on [redacted]."

The significance of the Petitioner's work is further corroborated by [redacted]'s commitment to funding his research and development work. For instance, [redacted] stated: "We generate approximately \$180 million revenues per year. We allocate \$20 million in revenue to [the Petitioner's] projects The funding set aside for his future projects with our company is targeted at \$50 million." The record also includes company documents relating to funding for the Petitioner's product development work.

The Petitioner's experience and expertise in his field, presented work, level of research funding, record of success in product development, innovations utilized in the oil and gas industry, and progress in advancing geosteering research position him well to advance his proposed endeavor. Accordingly, we find that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. As a researcher, developer and product manager, the Petitioner possesses considerable experience and expertise in geosteering technology. The record also demonstrates the widespread benefits associated with research progress towards improving oil and gas drilling operations. In addition, the Petitioner has documented his past successes in advancing geosteering research and developing effective new products and work flows. Based on the Petitioner's track record of successful research and development work and the significance of that work to advance U.S. oil and gas industry interests, we find that he offers contributions of such value that, on balance, they would benefit the United States even assuming that other qualified U.S. workers are available.

III. CONCLUSION

The Petitioner has met the requisite three prongs set forth in the *Dhanasar* analytical framework. We find that he has established he is eligible for and otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is sustained.